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ALEX RHODES
UNIT NO 9
50168 PONTIAC TRAIL
WIXOM MI 48393-2019

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MAR 26 2007

OFFICE OF PETITIONS

In re Application of
Berke, et al.
Application No. 09/207,634
Filed: December 9, 1998

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ON PETITION

This is a decision on the petition to revive under 37 CFR 1.137(a),
filed January 25, 2007.

The petition under 37 CFR 1.137(a) is **GRANTED**.

The above-identified application became abandoned for failure to reply
to the final Office action mailed May 23, 2005. This Office action
set a shortened statutory period for reply of three (3) months. No
reply having been received, the application became abandoned on
August 24, 2005. A Notice of Abandonment was mailed on
December 14, 2005.

A grantable petition under 37 CFR 1.137(a) must be accompanied by: (1)
the required reply, unless previously filed; (2) the petition fee as
set forth in 37 CFR 1.17(l); (3) a showing to the satisfaction of the
Commissioner that the entire delay in filing the required reply from
the due date for the reply until the filing of a grantable petition
pursuant to 37 CFR 1.137(a) was unavoidable; and (4) any terminal
disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant
to 37 CFR 1.137(d). Decisions on reviving abandoned applications on
the basis of "unavoidable" delay have adopted the reasonably prudent

person standard in determining if the delay was unavoidable:

The word 'unavoidable' . . . is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. It permits them in the exercise of this care to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present.¹

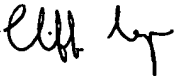
Moreover, a petition cannot be granted where a petitioner has failed to meet his or her burden of establishing that the delay was "unavoidable."²

Petitioner argues that the Office action was mailed to the incorrect address. A review of the application file reveals the presence of a Change of Correspondence Address, filed on June 23, 2004, directing the Office to mail all future correspondence to Alex Rhodes, Unit No. 9, 50168 Pontiac Trail, Wixom Michigan, 48393-2019. However, the final Office action was mailed to the prior address of record.

In view of the above, it is concluded that petitioner has met his burden of establishing that the delay was unavoidable.

The application is being forwarded to Group Art Unit 3618 for re-mailing of the May 23, 2005 final Office action, setting a new period for reply.

Telephone inquiries concerning this decision should be directed to the undersigned at (571)272-3207.



Cliff Congo
Petitions Attorney
Office of Petitions

¹ In re Mattullath, 38 App. D.C. 497, 514-15 (1912) (quoting Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)); see also Winkler v. Ladd, 221 F. Supp. 550, 552, 138 USPQ 666, 167-68 (D.D.C. 1963), aff'd, 143 USPQ 172 (D.C. Cir. 1963); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (1913).

² Haines v. Ouigg, 673 F. Supp. 314, 316-17, 5 USPQ2d 1130, 1131-32 (N.D. Ind. 1987).